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3/15/06

**IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE-DIVISION I**

STATE OF TENNESSEE

v.

PERRY A. MARCH

Case No. 99-B-1290

2006 FEB 22 AM 10:15
CLERK
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**NOTICE OF RESETTING MOTION TO COMPEL
AND/OR MOTION TO RE-COMPEL**

Comes the Defendant, Perry A. March, by and through his counsel of record, C. Edward Fowlkes, and gives notice of resetting Defendant's three Motions to Compel Discovery filed on 11/10/2005 (Paul Eichel, Elliott Greenberg and William Gambill). The state provided a response on 11/15/2005. At the setting of these various motions counsel for the defense announced and filed a "Notice of Filing and Striking Motion to Compel" based upon an assurance from the state that the State had complied with "the Defendant subpoenas issued and served on Michael Geraciotti and Lawrence Levine".

Since the striking of the Motion on 11/17/2005 Defendant received supplemental discovery on 12/20/2005 consisting of seventy-five (75) pages of billing and documentation not included in initial discovery response or the subsequent 11/15/2005 response to Defendant's Motion to Compel (fifty-one (51) pages not included in the State's initial response to Discovery).

The defense has learned that the state possess a CD containing records of which the State made copies of what it deemed pertinent (12/20/2005) (letter attached as Exhibit 1). The Defense wants it all. Mr. March was the attorney and as such is entitled under Rule 16 to his files and billings.

As requested in the various three (3) Motions to Compel, Defendant request all work product and billing records in order that a forensic accounting may be performed evidencing who owes whom. Defendant adopts his three (3) previously filed Motions herein as if retyped verbatim.

The State has indicated that it intends to offer in its case in chief documents which it did not provide in discovery or in response to a Motion to Compel. (Copy of DA letter of 12/20/2005 and the seventy-five (75) pages which are attached and incorporated by reference...under seal for client protection and attorney client privilege). The state having opted to introduce billings back to 1991 necessitates that the defense be provided all records of billings, accounts receivable, accounts payable, deposit records, splits on all clients for which Mr. March performed services while at Levine, Mattson, Orr and Geraciotti (here and after referred to as LMOG) (together with all IRS records which evidences how the funds were treated by the firm.

Rule 16 (c) provides:

Documents and Tangible Objects Upon request of the defendant, the State shall permit the quest of the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places or copies or portions thereof, which are within the possession, custody or control of the State and which are material to the preparation of the defendant's defense or are intended for use by the State as evidence in chief at the trial or were obtained from or belong to the defendant.

The fact that LMOG has billed and collected an/or billed and not collected funds belonging to Mr. March as well as any agreements with any of these clients clearly indicates that LMOG considered the funds retained by LMOG as their own, which likewise would indicate that LMOG treated the clients retained by Mr. March as his own including but not limited to the associated accounts receivable. The State has submitted no response to discovery or 12(2) of any notice to Mr. March that LMOG retained funds belonging to Mr. March.

The relationship between LMOG and the clients it retained (or account receivables it retained) is material to the preparation of the Defense of this case. Absent a contract to the contrary the files belong to the attorney who represented the client (the attorney who performed the work for the client). Mr. March is entitled to his own records.

Since the State's initial response to discovery, it has provided (in response to a motion to compel and a 12 (d) motion) an additional one hundred twenty-six (126) pages of documents which it intends to use in its case in chief. Rather than having discovery trickle in piece by piece the Defense request that all billing information as previously requested and requested here in be provided to the Defense. First, the documents represent billings of Mr. March's own clients and are his property and necessary to his defense (Rule 16) second, the State having asserted that it had given to the Defense all material sought by motion and subpoena, should be bound by that agreement that all requested material should be provided.


At the hearing on the Motion to Compel set for 11/17/05 Mr. Michael Geraciotti and Mr. Lawrence Levine were subpoenaed to testify. This motion and attendant subpoenas were stricken based on the State's assurance that all discovery and information requested in the two subpoenas to Geraciotti and Levine had been provided. It is now obvious that other information existed (121 pages) as it is equally obvious that more information exists or has been destroyed.

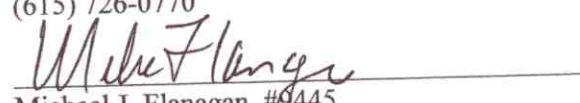
Defendant has asserted as an affirmative defense that of claim of right pursuant to T.C.A. §39-14-107(1)(2). The State has provided time records for the months of July (one day) and August which were not included in the escrow account maintained by LMOG for the benefit of Mr. March. These records are exculpatory and helpful to the defense, both in the defense of the case at bar and in mitigation. The records are necessary to the defense of claim of rights as are all billings and

accounts receivable from 1991. Should these be unavailable the Defense moves that this matter be reset in order for the Defense to issue Rule 17 subpoenas for all clients billed in July and August of 2005 by LMOG for services performed by Mr. March in order to ascertain the amount paid or if the accounts were forgiven. (Forbearance on the part of LMOG would indicate that LMOG treated the files it retained as its own personal property) which follows that the files retained by Mr. March included the accounts receivables. Defendant additionally request a Rule 17 subpoena for all clients for whom Mr. March performed services between 1994 and September of 1996, should the information not be provided by the State or LMOG as requested. This information must be obtained prior to trial or in the alternative each witness, will by necessity be subpoenaed to trial which will needlessly extend the time required for trial.

The names of the account receivables are necessary to show that the number of clients as well as the accounts receivable exceed those allegedly retained by Mr. March.

Respectfully Submitted:


C. Edward Fowlkes, #5988
LAWYER FOWLKES
172 Second Avenue North, Suite 210
Nashville, TN 37201-1908
(615) 726-0770


Michael J. Flanagan, #0445
95 White Bridge Road, Suite 208
Nashville, TN 37205
615/356-1580

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Motion was forwarded by U. S. Mail, postage prepaid, **Amy Eisenbeck and Ben Winters**, Assistant District Attorney General, 222 Second Avenue North, Suite 500, Nashville, TN 37201 on this 22 day of February, 2006


C. Edward Fowlkes